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No. 03-952

Supreme Court U.S.
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In The

Supreme Court of the United States

BEVERLY M. BRAZAUSKAS,

Petitioner,

v.

FORT WAYNE-SOUTH BEND DIOCESE, INC. SACRED HEART PARISH, AND JOSE MARTELLI,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Indiana

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

By narrowly defining the issues as nothing more than interpretation of a now-amended statute, Respondents have attempted to shift the focus of this case away from the important constitutional issues presented. But this attempt at legal argument by misdirection is as apparent as it is misguided.

The question before this Court is not the narrow construction of a since-amended Indiana statute. Rather it is the fundamental relationship established in the First Amendment between Church and State, and expounded upon by this Court in *Employment Division v. Smith*[1] and in the church autonomy doctrine.

Petitioner Beverly Brazauskas was permitted by Indiana law to obtain redress for violation of Indiana's Blacklisting Statute.[2] A misinterpretation of the First Amendment prevented that lawsuit from going forward. That misinterpretation was due to the ongoing confusion among various federal and state courts as to the interpretation of *Employment Division v. Smith* and application of the church autonomy doctrine.

The 1995 amendment of Indiana's Blacklisting Statute[3] in no way abrogates the constitutional issues raised in this petition. The amendment did not change the general applicability of the statute. The issue before this Court is

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[1] 494 U.S. 872 (1990)

[2] Ind. Code 22-5-3-1, -2 (West 1993).

[3] The amendment to the Indiana statute provided employers with an additional defense of truth to claims brought under Section 1 of the Indiana Blacklisting Statute. *See.* Ind. Code 22-5-3-1(b) (West 2003).

whether a defendant's status as a religious organization grants it immunity from neutral laws of general applicability where non-religious entities would be held liable for the same conduct. This determination has application far beyond the parties to this litigation and the context of a blacklisting statute. Indeed, it impacts every statutory regulation of conduct, and whether religious entities must comply with such proscriptions.

Respondents also maintain that blacklisting cases are rare, and therefore this case does not warrant the Court's attention. But interpretation of Indiana's blacklisting law is not the issue presented to this Court. This Court did not grant certiorari in *Employment Division v. Smith* because ingestion of peyote had risen to the top of the nation's priorities in the war on drugs. Certiorari was granted because the case raised fundamental issues regarding the relationship between religious acts and neutral laws of general applicability. The same is true here.

The confusion caused by divergent interpretations of the hybrid exception under *Employment Division v. Smith* is of significant importance and requires the attention of this Court. Likewise, of equal importance is determining the application of the church autonomy doctrine where it has been used to exempt religious entities from liability for otherwise prohibited conduct.

The Petition for Certiorari should be granted.

Respectfully submitted,

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